

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Amendment of Part 90 of the Commission's) PR Docket No. 89-522
Rules to Provide for the Use of the)
220-222 MHz Band by the Private Land)
Mobile Radio Service)
)
Implementation of Sections 3(n) and 332 of) GN Docket No. 93-252
the Communications Act)
)
Regulatory Treatment of Mobile Services)

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To: The Commission

CONSOLIDATED REPLY COMMENTS

Incom Communications Corporation ("Incomco"), by its attorneys and pursuant to §1.415(c) of the Commission's Rules, hereby submits a consolidated reply to the comments filed by other parties in response to the *Fourth Notice of Proposed Rule Making*, FCC 95-381, released August 29, 1995 ("*4th NPRM*") in the above-referenced dockets.

In general, Incomco agrees with most of the comments presented by other members of the 220 MHz industry. More specifically, Incomco agrees with the other comments in support of the proposal presented by the American Mobile Telecommunications Association, Inc. ("AMTA") for the modification of Phase I licenses to relocate base stations. AMTA's proposal will reduce procedural burdens and, like the Commission's proposal, avoid situations of mutual exclusivity while (unlike the Commission's proposal) at the same time allowing Phase I licensees maximum flexibility to develop viable 220-222 MHz systems.¹

¹ See Comments filed by AMTA; SEA, Inc. ("SEA"); E.F. Johnson Company ("E.F. Johnson"); Roamer One, Inc. ("Roamer"); and SMR Advisory Group, L.C. ("SMRA Group").

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Incomco also concurs with the comments of E.F. Johnson at page 6, Roamer at page 9, n.12, and SMRA Group at page 2, n.2, that the issue of defining the "service area contour" of a 220-222 MHz system is more appropriately left for the rule making proceeding initiated by the Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking, (PR. Docket No.89-552, GN Docket No. 93-252, PP Docket No.93-253), FCC 95-312, released August 28, 1995 (the "2d MO&O and 3d NPRM"). The Phase I licensees should be governed by the Commission's Rules in place when their licenses were issued and when many of them requested and received special temporary authorizations ("STAs") to relocate their base stations pending the opening of a filing window for modifications applications. These rules do *not* restrict relocation of a base station based on contour limits, much less define the service area contour of a 220-222 MHz system. Had Phase I licensees been permitted to modify their licenses to relocate their base stations in a timely manner², the modification applications would have been processed under the current rules, which restrict relocation of facilities based on the 120 km co-channel separation requirements. AMTA's proposal is more in keeping with the current rules and the expectations of the Phase I licensees, especially those currently operating under STAs, and does not rely on an arbitrary definition of "service area contour".

Incomco also concurs with the other commenters that the Commission's definition of the "service area contour" substantially of a 220-222 MHz system is arbitrary and inappropriate for the service. In addition to finding the Commission's contour adherence approach to be too restrictive, almost every commenter found that the Commission's proposal of the 38 dBu contour

² As discussed by almost all of the commenters, Phase I licensees have been unable to modify their licenses through no fault of their own.

as the "service area contour" substantially underestimates the coverage properties of the 220-222 MHz service. Industry experts and experienced 220-222 MHz system operators agree that a more appropriate definition of the service area contour of a 220-222 MHz system would be the 32 dBu or the 28 dBu contour.³ A determination by the Commission to define the service area contour of a 220-222 MHz system as the 38 dBu contour would be arbitrary and capricious in light of the information provided by the commenters in this proceeding. Specifically, the comments show that: 1) the Commission has conducted absolutely no field tests; 2) every private filed test has found much larger reliable service areas; 3) customers are routinely receiving reliable service at much lower contour levels and are subscribing on the assumption that existing reliable service areas will be protected; and 4) the last time the Commission looked at a remotely analogous situation, the Commission found that even UHF-band cellular operators provide reliable service at the 32 dBu contour.

Finally, Incomco agrees only in small part with comments of PCIA. Incomco *disagrees* with PCIA's comments to the extent they support the Commission's proposal in the 4th NPRM to use a contour adherence approach for modification of incumbent 220-222 MHz systems. As briefly mentioned above and as discussed in greater detail by most of the other commenters in this proceeding, such an approach is too restrictive and will only serve to jeopardize the viability of the 220-222 MHz industry. Incomco agrees with PCIA's comments to the limited extent that, in the event the Commission's determines to use its proposed contour adherence approach to modifications of the Phase I 220-222 MHz licenses, the Phase I licensees should be able to

³ See comments of AMTA at 9, E.F. Johnson at 6-7, Roamer at 5, SMRA Group at 5-6, Personal Communications Industry Association ("PCIA") at 3-4 and the Richard L. Vega Group at 1.

modify their licenses to relocate their base stations anywhere within the *28 dBu contour*, regardless of whether this contour is characterized as a service area contour or an interference contour.

Clearly the public interest is best served by permitting 220 MHz operators the flexibility to relocate transmitter sites in order to provide customers with the largest mobile service area permitted by the operating parameters of the radio service. Logically, constraints on mobile service area coverage should be dictated by the limits of the spectrum's operating characteristics, not by arbitrary and capricious agency regulation. The only purpose restrictions in serviceable coverage area would accomplish would be to increase the attractiveness of 220 MHz BTAs at the proposed auctions. To hobble incumbent licensees who are actually providing service to the public in an effort to create value for auction bidders is an abdication of the Commission's spectrum management responsibility and a tremendous disservice to the public interest.

Operators of 220 MHz systems are today providing service to customers in dozens of cities across the country. Their need to modify site location in order to provide the maximum service possible under the current co-channel rules takes public interest precedent over the Commission's agenda of creating value for auction bidders in order to raise revenues. If the Commission is to abide by its primary function of protecting the public interest in telecommunications policy, then it must commit to putting fast, economical and efficient service to the public

first and foremost. Permitting modification as set forth in AMTA's and Incomco's comments will in fact accomplish this goal.

Respectfully submitted,

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September 27, 1995

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CERTIFICATE OF SERVICE

I, JacLyn Freeman, a secretary in the law offices of Brown Nietert & Kaufman, Chartered, hereby certify that I have, on this 27th day of September, 1995, caused to have hand delivered a copy of the foregoing Consolidated Reply Comments to the following:

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